

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.444/2011

(Ori.resp.
no.1)

1. Ashok Namdeorao Tayade,
Aged about 50 years, Occ.- Jeep Owner,
R/o.-Wadhaili Champ, Amravati,
Tah. and Dist. Amravati.

(Ori.resp.
no.3)

2. Oriental Insurance Company Ltd.,
Amravati Branch, through the
Divisional Manager Nagpur Divisional Office II, 8,
Hindustan Colony, Wardha Road, Nagpur.

...APPELLANTS

VERSUS

(Ori.
petitioner)

1. Vishant Manohar Ingale,
Aged about 36 years, Occ.Service, R/o.- Near Circus Ground,
Ramnagar, Wardha, Tah, and Dist. Wardha.

(Ori.
Resp.no.2)

2. Gajanan Kawduji Chaudhari,
Aged Adult, Occ.-Driver,
R/o.-Chandur Railway, Tah. Chandur Railway, Dist. Amravati.

(Ori. Resp.
no.4)

3. Vinod Nagoraoji Deshmukh,
Age Adult, R/o. Sawanga, Bazargaon, Nagpur.

(Ori. Resp.
no.5)

4. The New India Assurance Co.,
through its Branch Manager, Wardha,
Tah. and Distt. Wardha.

...RESPONDENTS

Shri D.N. Kukday, Advocate for appellants.
Ms Aayushi Tripathi, Advocate h/f Shri S.S. Sanyal, Advocate for
resp. no.4.

CORAM : PUSHPA V. GANEDIWALA, J.
Date : 28-09-2021.

ORAL JUDGMENT :

The insured and the insurer jointly filed this Appeal against the judgment and award dated 10-09-2008, passed by the Motor Accident Claims Tribunal, Wardha in Motor Accident Claims Petition No.121/2007, whereby the learned Chairman of the Motor Accident Claims Tribunal, Wardha, awarded compensation of Rs. 11,89,796/- inclusive of 'No Fault Liability' amount in favour of respondent no.1 with proportionate costs and interest @ 7.5% per annum from the date of petition till its realization, jointly and severally against the appellants herein.

2. The short point for consideration of this Court is "whether grant of 50% additional amount in anticipation considering the respondent no.1's physical disability, i.e. amputation of right hand from shoulder and right leg from below the knee that he may be removed in future from service or he himself may leave the job is, legal, correct and proper"?

3. The facts in brief, leading to filing of the present Appeal, may be stated as under :-

The respondent no.1 herein is the original petitioner who met with an accident on 06-06-2006 while riding on motorcycle

bearing registration No.MH-32/K-3903 proceeding from Amravati towards Wardha. At that time, one taxi bearing registration No.MH-27/C-5199 came from opposite side in a high speed and gave a dash to the motorcycle of the petitioner/respondent no.1, as a result of which he sustained severe injuries. Thereafter, he was admitted to the hospital of Dr. Yadgire, where he was treated as an indoor patient from 06-06-2006 to 17-06-2006. That during the course of treatment, his right hand from shoulder and right leg from below the knee were amputated.

4. The aforesaid taxi is owned by the appellant no.1 and is insured with appellant no.2/Oriental Insurance Company Limited. The said taxi was being driven by respondent no.2. The petitioner filed Claim Petition claiming compensation of Rs.15 lakh, and out of the said amount, he claimed Rs.4,06,494/- towards the medical expenses which were incurred by him.

5. The appellants herein, the owner and insurer of the offending vehicle, resisted the Claim Petition by filing their separate written statements. The claimant examined himself at Exhibit-31 and brought on record all the medical papers in support of his claim. He stated that at the time of accident, he was 36 years old, and was in service with the Wardha Nagari Adhikosh (Bank) Maryadit, Wardha

and receiving salary of Rs.9,439/- per month. The defence of the appellants is of contributory negligence on part of the claimant. The learned Chairman of the Tribunal, after recording evidence, decided the Claim Petition and awarded compensation as above. This judgment is impugned in this Appeal.

6. I have heard Shri Kukday, learned Advocate appearing for the appellants, and Ms Tripathi, learned Advocate holding for Shri S.S. Sanyal, Advocate for the respondent no.4-Insurance Company.

7. Shri Kukday, learned Counsel for the appellants, restricted his argument only on the point that the learned Chairman of the Tribunal has erroneously awarded the compensation of Rs. 3,84,000/- in anticipation that there is a possibility that in future the employer of the claimant, i.e., the bank may remove him from service as he is not in a position to write and to do any work except giving oral instructions to the customers of bank or claimant may not be in a position to attend the bank as he lost his right hand and right leg. The learned Counsel for the appellants further submits that the claimant is still in service, and therefore, the learned Tribunal could not have awarded an amount of Rs. 3,84,000/- on this count.

8. None appeared for the claimant.

9. I have perused the record with the assistance of the learned Counsel Shri Kukday for the appellants and also considered the submissions made on behalf of both the sides.

10. A careful perusal of the impugned judgment, passed in Motor Accident Claims Petition No.121/2007, would reveal that the learned Chairman of the Tribunal has considered net salary of the appellant as Rs. 4000/- per month against the salary of Rs.9,439/- per month. There is no discussion in the judgment as to under what head the deductions from the salary have been made. Secondly, the learned Chairman of the Tribunal has considered Rs.4,05,796/- regarding the actual expenditure incurred by the claimant for his treatment and for artificial hand and leg. However, it appears that the learned Tribunal has not considered the future medical expenses, which the claimant may have to spend for replacement of his artificial hand and leg during his life time. Furthermore, the learned Tribunal has not considered the other components in terms of judgments of the Hon'ble Supreme Court in the case of Raj Kumar vs Ajay Kumar and another, reported in 2011(1) SCC 343 and National Insurance Company Ltd. vs Pranay Sethi, reported in (2017) 16 SCC 680. The learned Tribunal absolutely has not considered the damages for pain and suffering and trauma as a consequence of the injuries. The present case is not a normal case of injuries but, the claimant has lost his right hand from

shoulder and right leg from below knee. As per the Disability Certificate issued by the Medical Board, Wardha (Exhibit-291), the respondent no.1 has caused 85% disability and the learned Tribunal has considered his disability as 100% considering his physical condition. The learned Tribunal has also observed that the respondent no.1 is not able to do any work except giving oral instructions to the customers of the bank, and therefore, he may be removed from the bank in future. But, the fact as per the information of the learned Counsel for the appellants is, that the respondent no.1 is still working in the bank.

11. The Hon'ble Apex Court in its judgment in the case of **Raj Kumar vs Ajay Kumar and another** (*supra*) has laid down the following heads under which compensation is awarded in personal injury cases :

"Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity)."

12. In the instant case, the learned Tribunal has not considered any of the aforesaid components except points nos.(i) and (ii). No amount is granted towards the heads - future medical expenses, loss of amenities, love and affection etc. In my view, as the learned Tribunal has not granted compensation towards the other heads, which the claimant is entitled for, and only granted 50% additional amount in anticipation by considering his future earnings in case he loses job. Considering the aforesaid facts, in any case, the ultimate amount of compensation would be more or less the same, what has been awarded by the learned Chairman of the Tribunal. In the circumstances, in the opinion of this Court, the amount of Rs.11,89,796/- appears to be just and reasonable considering the serious injuries suffered by the claimants during the accident which made him totally paralyzed person and will pass future life in continuous pain and suffering and there would be lost of amenities and expectation in life. Moreover the sum of Rs.11,89,796/- includes actual medical expenses of Rs.4,05,796/-.

13. In view of the aforesaid discussion, I am not inclined to interfere in the impugned judgment and award dated 10-09-2008 passed in Motor Accident Claims Petition No.121/2007 by the Motor Accident Claims Tribunal, Wardha. Hence, the Appeal needs to be dismissed and the same is accordingly dismissed with no order as to costs.

14. The claimant/respondent no.1 is permitted to withdraw the balance amount of compensation which has been deposited by the appellants with the Registry of this Court with accrued interest thereon.

15. First Appeal stands disposed of.

JUDGE

Deshmukh